

EXHIBIT 9

Washington, DC

1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION,) MDL No. 1456
_____) Civil Action No
THIS DOCUMENT RELATES TO:) 01-12257-PBS
_____) Judge Patti B.
United States of America,) Saris
ex rel. Ven-A-Care of the) Mag. Judge
Florida Keys, Inc., v.) Marianne Bowler
Abbott Laboratories Inc.)
Civil Action No.)
06-11337-PBS)
-----X

Videotaped Deposition of CYNTHIA B.
SENSIBAUGH, a witness herein, at the offices of
Jones Day, 51 Louisiana Avenue, N.W., Washington,
D.C. commencing at 9:11 a.m. on Friday, March 7,

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27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 Sensibaugh Exhibit -- either 6 or 7. It's your 2 February 10, '97, brief memo. In that memo, you 3 say that you wanted to get together with Mr. Buell 4 and Mr. Heggie to get their thoughts on the 5 President's proposal to shift to an acquisition 6 cost-based drug reimbursement system. 7 Were you personally involved in 8 gathering some of the opinions that were solicited 9 in the process of developing Abbott's ultimate 10 position on what Medicare drug reimbursement 11 should be in '97? 12 MS. TABACCHI: Object to the form. 13 Beyond the scope. 14 THE WITNESS: I don't -- personally, I 15 do not remember, you know, getting any specific 16 feedback. And then I note that it does say in the 17 memo, "We would like to get your thoughts." 18 BY MR. GOBENA: 19 Q. So you're highlighting "we" is the fact 20 that the thoughts that might have been solicited 21 might have gone directly to Mr. Landside or 22 someone else?</p>	<p style="text-align: right;">104</p> <p>1 MS. TABACCHI: Object to the form. 2 Beyond the scope. 3 THE WITNESS: I think you would be able 4 to consult his affidavit where he talks about that 5 he wasn't involved in the day-to-day activities. 6 BY MR. GOBENA: 7 Q. I understand you're talking about an 8 affidavit that was drafted on his behalf, but -- 9 you're not pointing to deposition testimony. But 10 if I wanted to get down to the specifics, I would 11 have to talk to him; isn't that correct? 12 MS. TABACCHI: Object to form. Beyond 13 the scope. 14 THE WITNESS: I mean, again, I think he 15 makes it clear in his affidavit there. 16 BY MR. GOBENA: 17 Q. If you go to the fourth paragraph of 18 the June 9, '97, memorandum from Mr. Landside to 19 the CEO of the company, he says that, "With 20 reimbursement for Lupron, Calcijex and Abbokinase 21 at issue, hiring Greenberg Traurig would be most 22 useful." And he goes on to say, "Reimbursement of</p>
<p style="text-align: right;">103</p> <p>1 MS. TABACCHI: Object to the form. 2 Beyond the scope. 3 THE WITNESS: Yes, I was highlighting 4 that this was kind of a request on behalf of the 5 Washington office. 6 BY MR. GOBENA: 7 Q. But sitting here today, is it basically 8 your testimony that you can't tell me who 9 specifically, whether it's one or more persons, 10 authorized Abbott's taking the position that 11 Medicare drug reimbursement should be at 12 95 percent of AWP with no discretion to the 13 Secretary, at least as set forth in 1997? 14 MS. TABACCHI: Object to the form. 15 Beyond the scope. 16 THE WITNESS: That is correct. 17 BY MR. GOBENA: 18 Q. And if I wanted to find out whether 19 Mr. Burnham was involved in the decision-making 20 process with regard to Abbott's position on the 21 Medicare drug reimbursement issue, I would have to 22 talk to Mr. Burnham; isn't that correct?</p>	<p style="text-align: right;">105</p> <p>1 Medicare drugs is the Washington office's top 2 priority." 3 Was Mr. Landside correctly reflecting 4 the top priority for Abbott's Washington office in 5 1997? 6 MS. TABACCHI: Object to the form. 7 Beyond the scope. 8 THE WITNESS: Yes. As he says in the 9 memo, it's a top priority at the time, and I think 10 that's what he also confirmed in his testimony, 11 that it was -- the reimbursement policy in this 12 legislative sense was the top priority. 13 BY MR. GOBENA: 14 Q. And that's because the Medicare drug 15 reimbursement policy could have an impact on 16 Abbott's business; isn't that correct? 17 MS. TABACCHI: Object to the form. 18 Beyond the scope. 19 THE WITNESS: Well, it would have an 20 impact on the doctors' and patients' access to the 21 drugs we sell. 22 BY MR. GOBENA:</p>

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<p style="text-align: right;">118</p> <p>1 deposition that clearly showed that he did</p> <p>2 participate in lobbying efforts; isn't that</p> <p>3 correct, Ms. Sensibaugh?</p> <p>4 MS. TABACCHI: Objection as beyond the</p> <p>5 scope.</p> <p>6 BY MR. GOBENA:</p> <p>7 Q. I should clarify lobbying efforts at</p> <p>8 least particularly with respect to these</p> <p>9 legislative developments in '97 about Medicare</p> <p>10 drug reimbursement, correct?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 Beyond the scope.</p> <p>13 THE WITNESS: I would just ask as to</p> <p>14 which particular one you're -- which documents</p> <p>15 you're talking about. I'm not sure.</p> <p>16 BY MR. GOBENA:</p> <p>17 Q. If you want, we can take a look at</p> <p>18 some -- we can have some exhibits marked, if it</p> <p>19 makes it easier for you.</p> <p>20 MR. GOBENA: I am going to have this</p> <p>21 marked as Sensibaugh Exhibit 12.</p> <p>22 (Exhibit Sensibaugh 012 was marked</p>	<p style="text-align: right;">120</p> <p>1 THE WITNESS: I do remember seeing it.</p> <p>2 BY MR. GOBENA:</p> <p>3 Q. If you go to the first paragraph he</p> <p>4 says, "First, let me congratulate you for leading</p> <p>5 the effort to pass the balanced budget</p> <p>6 legislation. The tax and spending bills you</p> <p>7 passed are truly historic in importance and their</p> <p>8 passage was due, in no small part, to the many</p> <p>9 hours you personally spent."</p> <p>10 And he is directing this to Bill</p> <p>11 Archer, a member of Congress. He then goes on to</p> <p>12 say, "Second, I want to express our gratitude for</p> <p>13 what you accomplished on the Medicare drug</p> <p>14 reimbursement provision. When we spoke on the</p> <p>15 phone, you said you intended to hold the House</p> <p>16 language in the conference committee, and you did.</p> <p>17 Your language was clearly superior to the</p> <p>18 Senate's, and Abbott thanks you for convincing the</p> <p>19 rest of the conferees. I know you had far bigger</p> <p>20 issues on the agenda. Taking the time to call me</p> <p>21 and discuss our concerns was greatly appreciated."</p> <p>22 Do you see that there?</p>
<p style="text-align: right;">119</p> <p>1 for identification.)</p> <p>2 MR. GOBENA: I am going to hold on to</p> <p>3 this copy for a, second and then I will give it to</p> <p>4 you.</p> <p>5 MS. TABACCHI: It's okay.</p> <p>6 BY MR. GOBENA:</p> <p>7 Q. The exhibit we just had marked is an</p> <p>8 August 5, '97, letter from Duane Burnham. And the</p> <p>9 reason why you can identify that is if you look at</p> <p>10 the top, there is a very faded header that says</p> <p>11 Duane L. Burnham, and then at the bottom that</p> <p>12 looks like Mr. Burnham's signature, correct?</p> <p>13 A. Yes.</p> <p>14 MS. TABACCHI: I am going to object as</p> <p>15 beyond the scope to the witness' ability to speak</p> <p>16 on behalf of the corporation authenticating</p> <p>17 Mr. Burnham's signature.</p> <p>18 BY MR. GOBENA:</p> <p>19 Q. Do you recall reviewing this document</p> <p>20 at your prior deposition?</p> <p>21 MS. TABACCHI: Objection as beyond the</p> <p>22 scope.</p>	<p style="text-align: right;">121</p> <p>1 A. Yes, I do.</p> <p>2 Q. Mr. Burnham did lobby with respect to</p> <p>3 the Medicare drug reimbursement issue in 1997;</p> <p>4 isn't that correct?</p> <p>5 MS. TABACCHI: Objection as beyond the</p> <p>6 scope.</p> <p>7 THE WITNESS: It looks like -- from</p> <p>8 this letter, it says that there was a call with</p> <p>9 Congressman Archer where they discussed this</p> <p>10 issue.</p> <p>11 BY MR. GOBENA:</p> <p>12 Q. You don't -- well, strike that.</p> <p>13 Did you personally participate in the</p> <p>14 call that's reflected in the August 5 letter from</p> <p>15 Mr. Burnham to Mr. Archer about the Medicare drug</p> <p>16 reimbursement issue?</p> <p>17 MS. TABACCHI: Objection as beyond the</p> <p>18 scope.</p> <p>19 THE WITNESS: No, I don't remember</p> <p>20 participating in any call.</p> <p>21 BY MR. GOBENA:</p> <p>22 Q. Do you know whether Mr. Landslide</p>

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<p style="text-align: right;">122</p> <p>1 participated in that call between Mr. Burnham and</p> <p>2 Mr. Archer in 1997 about the Medicare drug</p> <p>3 reimbursement issue?</p> <p>4 MS. TABACCHI: The same objection.</p> <p>5 THE WITNESS: No, I don't know.</p> <p>6 BY MR. GOBENA:</p> <p>7 Q. Isn't it fair to say that the only way</p> <p>8 to find out what actually was said in that call</p> <p>9 between Mr. Burnham and Mr. Archer is to talk to</p> <p>10 Mr. Burnham about that call? Isn't that true?</p> <p>11 MS. TABACCHI: Objection. Beyond the</p> <p>12 scope.</p> <p>13 THE WITNESS: Well, again, I would</p> <p>14 refer to his affidavit where he says he doesn't</p> <p>15 have any recollection.</p> <p>16 BY MR. GOBENA:</p> <p>17 Q. No one from the Washington office</p> <p>18 participated in that call between Mr. Archer and</p> <p>19 Mr. Burnham; isn't that correct?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 Beyond the scope.</p> <p>22 THE WITNESS: Not that I'm aware of.</p>	<p style="text-align: right;">124</p> <p>1 says, "Duane has lobbied before, on 936, trade and</p> <p>2 the Clinton health bill. He is good and knows</p> <p>3 CEOs have influence on Capitol Hill. I do not</p> <p>4 know if he is available to come to Washington, but</p> <p>5 if he is, do you think he should be asked?"</p> <p>6 Do you know what Mr. Landside is</p> <p>7 referring to when he said Mr. Burnham lobbied on</p> <p>8 936? What was that?</p> <p>9 MS. TABACCHI: Objection as beyond the</p> <p>10 scope.</p> <p>11 THE WITNESS: As I remember,</p> <p>12 section 936 is a provision of the tax code.</p> <p>13 BY MR. GOBENA:</p> <p>14 Q. Do you recall what specific provision</p> <p>15 it was or generally have -- do you have a general</p> <p>16 recollection of what 936 referred to in the tax</p> <p>17 code?</p> <p>18 MS. TABACCHI: Beyond the scope.</p> <p>19 THE WITNESS: As I remember, I have a</p> <p>20 general recollection it has to do with benefits</p> <p>21 for companies who locate in Puerto Rico.</p> <p>22 BY MR. GOBENA:</p>
<p style="text-align: right;">123</p> <p>1 MR. GOBENA: Why don't we go off the</p> <p>2 record here and take a break.</p> <p>3 MS. TABACCHI: Sure.</p> <p>4 THE VIDEOGRAPHER: This is the end of</p> <p>5 tape 2. Off the record at 11:36.</p> <p>6 (Recess.)</p> <p>7 THE VIDEOGRAPHER: This is the</p> <p>8 beginning of tape 3 in the corporate deposition of</p> <p>9 Abbott by Mrs. Sensibaugh. On the record at</p> <p>10 11:51.</p> <p>11 BY MR. GOBENA:</p> <p>12 Q. Ms. Sensibaugh, I want to turn your</p> <p>13 attention back to one of the prior exhibits --</p> <p>14 it's either 9 or 10. It's the June 20 memo from</p> <p>15 Mr. Landside to Mr. Barmak.</p> <p>16 A. Okay.</p> <p>17 Q. And if you go to the second page, you</p> <p>18 recall there's some language from Mr. Landside</p> <p>19 advocating for Mr. Burnham to be involved in</p> <p>20 lobbying efforts on the Medicare drug</p> <p>21 reimbursement issues transpiring in '97.</p> <p>22 I want to go to the last paragraph. He</p>	<p style="text-align: right;">125</p> <p>1 Q. He says Mr. Burnham has also lobbied on</p> <p>2 trade issues as well. Do you have any personal</p> <p>3 recollection as to what trade issues Mr. Burnham</p> <p>4 lobbied on?</p> <p>5 A. No, I don't.</p> <p>6 Q. He also mentions that Mr. Burnham</p> <p>7 lobbied on the Clinton health bill. Do you know</p> <p>8 which health bill Mr. Landside was referring to</p> <p>9 there?</p> <p>10 MS. TABACCHI: Beyond the scope.</p> <p>11 THE WITNESS: No, I don't.</p> <p>12 BY MR. GOBENA:</p> <p>13 Q. You do recall that in 1993 or so there</p> <p>14 was a health bill that was advanced or advocated</p> <p>15 by the Clinton administration. Do you recall</p> <p>16 that?</p> <p>17 MS. TABACCHI: Objection. Beyond the</p> <p>18 scope. Object to the form.</p> <p>19 THE WITNESS: Yes, I do recall that.</p> <p>20 BY MR. GOBENA:</p> <p>21 Q. Does this appear to be a reference to</p> <p>22 that 1993 comprehensive healthcare effort by the</p>

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<p style="text-align: right;">126</p> <p>1 Clinton administration?</p> <p>2 MS. TABACCHI: The same objections.</p> <p>3 THE WITNESS: Again, it's describing a</p> <p>4 Clinton health bill. I don't know whether it's</p> <p>5 that particular one.</p> <p>6 BY MR. GOBENA:</p> <p>7 Q. I guess my larger summary question is</p> <p>8 that it appears that Mr. Burnham has been used by</p> <p>9 Abbott to lobby from time to time on various</p> <p>10 legislative issues, correct?</p> <p>11 MS. TABACCHI: Beyond the scope.</p> <p>12 THE WITNESS: Yes. I am aware that</p> <p>13 while I was with Abbott, he came to Washington to</p> <p>14 lobby on some issues.</p> <p>15 BY MR. GOBENA:</p> <p>16 Q. And if Mr. Burnham was being asked to</p> <p>17 lobby on a particular legislative issue or</p> <p>18 development, it was because that was an important</p> <p>19 legislative development; isn't that correct?</p> <p>20 MS. TABACCHI: Objection to the form.</p> <p>21 Beyond the scope.</p> <p>22 THE WITNESS: Yes, or one where they</p>	<p style="text-align: right;">128</p> <p>1 scope.</p> <p>2 THE WITNESS: I would say those could</p> <p>3 be two. I mean, there could be possibly others</p> <p>4 you could probably think of.</p> <p>5 BY MR. GOBENA:</p> <p>6 Q. I am going to shift gears here for a</p> <p>7 second and ask you a little bit about document</p> <p>8 retention which we talked about when we were --</p> <p>9 during your 30(b)(1) deposition. And I just want</p> <p>10 to ask a couple of follow-up questions. Does</p> <p>11 Abbott have a policy of documenting meetings that</p> <p>12 people in the Washington office have with members</p> <p>13 of Congress?</p> <p>14 MS. TABACCHI: Can we just agree that</p> <p>15 this entire line of questioning is beyond the</p> <p>16 scope of the notice so I don't have to object to</p> <p>17 every question?</p> <p>18 MR. GOBENA: That's fine. Yes.</p> <p>19 MS. TABACCHI: All right. Object to</p> <p>20 the form.</p> <p>21 THE WITNESS: Are you talking about</p> <p>22 does Abbott have a corporate policy for</p>
<p style="text-align: right;">127</p> <p>1 thought his expertise and knowledge would be</p> <p>2 important to share.</p> <p>3 BY MR. GOBENA:</p> <p>4 Q. Do you believe, then, that one of the</p> <p>5 reasons why Mr. Burnham was being asked to lobby</p> <p>6 on the Medicare drug reimbursement issue is</p> <p>7 because he had some important expertise or</p> <p>8 knowledge that might help advance Abbott's</p> <p>9 position on the -- with respect to the House</p> <p>10 version of the Medicare drug bill?</p> <p>11 MS. TABACCHI: Objection. Beyond the</p> <p>12 scope.</p> <p>13 THE WITNESS: Yes, I don't know -- you</p> <p>14 know, it's not clear the particular reason here.</p> <p>15 BY MR. GOBENA:</p> <p>16 Q. So it could be either that he has</p> <p>17 expertise or it could be that it's important. But</p> <p>18 that's -- generally, those are the two scenarios</p> <p>19 where Mr. Burnham would be asked to weigh in on</p> <p>20 Abbott's lobbying efforts on a legislative</p> <p>21 development, correct?</p> <p>22 MS. TABACCHI: Object. Beyond the</p>	<p style="text-align: right;">129</p> <p>1 documenting meetings?</p> <p>2 BY MR. GOBENA:</p> <p>3 Q. Or let's say the Washington office. Is</p> <p>4 there a particular policy that the Washington</p> <p>5 office has about documenting meetings that it has</p> <p>6 with members of Congress or their staff about</p> <p>7 proposed legislation or legislative developments?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: From my personal</p> <p>10 knowledge, there is no specific policy on</p> <p>11 documenting meetings.</p> <p>12 BY MR. GOBENA:</p> <p>13 Q. When you participated in meetings with</p> <p>14 members of Congress or their staff, did you</p> <p>15 document those meetings in any way?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: It's my own personal</p> <p>18 habits -- what I would normally do in most</p> <p>19 instances would -- I would make a note of the</p> <p>20 meeting.</p> <p>21 BY MR. GOBENA:</p> <p>22 Q. And was it in the form of a memorandum</p>

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